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November 14, 2000

**VIA FEDERAL EXPRESS**

Commission Secretary  
Magalie Roman Salas  
445 12<sup>th</sup> Street, S.W., CY-B402  
Washington, DC 20554

RECEIVED

NOV 15 2000

FCC MAIL ROOM

Re: Comments Provided by Ionex Communications, Inc. in Opposition to  
Southwestern Bell Telephone Company's Request for Authorization Under  
Section 271 of the Communications Act to Provide In-Region, InterLATA  
Service in the State of Kansas  
CC Docket No. 00-217

Dear Ms. Salas:

Enclosed for filing with the Commission is the original and one copy of the above-referenced document. The required copies of this document have been sent to the Common Carrier Bureau and the International Transcription Service.

Please return one file-stamped copy of this document in the envelope enclosed for that purpose. If you should have any question, please do not hesitate to contact me. Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

*Lisa Creighton /cmw*

Lisa C. Creighton

LCC/cmw  
Enclosures

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

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**COMMENTS PROVIDED BY IONEX  
COMMUNICATIONS, INC. IN OPPOSITION TO  
SOUTHWESTERN BELL TELEPHONE COMPANY'S  
REQUEST FOR AUTHORIZATION UNDER SECTION 271 OF THE  
COMMUNICATIONS ACT TO PROVIDE IN-REGION, INTERLATA  
SERVICE IN THE STATE OF KANSAS**

**CC DOCKET NO. 00-217**

COMES NOW Ionex Communications, Inc. ("Ionex"), by and through its attorneys, and hereby provides the following comments in opposition to Southwestern Bell Telephone Company's ("SWBT") application for authority under Section 271 of the Communications Act:

1. This Commission should not grant SWBT's request for authority to provide in-region, interLATA service in the state of Kansas as SWBT has failed to comply with 47 U.S.C. §271(c)(2)(B)(I). This section requires that SWBT demonstrate that it has provided or generally offered to other telecommunications companies interconnection pursuant to rates that are cost-based and non-discriminatory in compliance with the Communications Act. By SWBT's own admissions in pleadings filed subsequent to the Kansas Corporation Commission's ("KCC") verbal approval of SWBT's application in Kansas, SWBT is not complying with this requirement. SWBT's admission goes to the core of this proceeding, undermines the basis of the KCC's initial approval of SWBT's application, and merits a denial of SWBT's request to this Commission.

2. The Kansas Generic UNE Docket, *In the Matter of the Joint Application of Sprint United Telephone Company, United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas and United Telephone Company of Southeastern Kansas for the Commission to open a generic proceeding on SWBT's*

*rates for interconnection, unbundled elements, transport and termination and resale*, Docket No. 97-SCCC-149-GIT (hereinafter the “Generic UNE Docket”), was opened in November, 1996 to provide the opportunity to set rates consistent with the Communications Act for all CLECs in Kansas. In opening the Generic UNE Docket, the KCC noted that the arbitration period provided in the Communications Act was too short to allow an in-depth examination of cost issues involved in setting rates. In examining UNE rates, the KCC issued orders adopting TELRIC as a cost methodology required under Section 252(d) of the Communications Act, selecting SWBT’s cost studies and setting inputs for the cost studies. These decisions led to the permanent rates set in a February 1999 Order. In setting those prices, the KCC held that, “the prices . . . are based on the TELRIC cost of UNEs and interconnection and are just and reasonable.” Further, the Commission ruled that, “all CLECs can avail themselves of the prices established herein.” *Id.* February 1999 Order at Para. 74.

3. In April of 1999, the KCC granted reconsideration of the February Order, but it pointedly refused to stay the effect of the permanent UNE rates. Further, when the KCC issued its Order on Reconsideration on September 19, 1999, it reaffirmed its prior finding that the UNE rates set in the February Order were TELRIC-based and held, “in general, SWBT’s cost to provide UNEs in interconnection will not vary from CLEC to CLEC; thus, the price established under the TELRIC for those elements should not vary.” (September Order at Paragraph 78).

4. In evaluating SWBT’s 271 application in Kansas, the KCC and its staff clearly believed that SWBT was voluntarily making the rates set in the Generic UNE docket available to all CLECs. Indeed, the only evidence of compliance with the pricing aspects of checklist item (i) in the KCC staff’s recommendation is the reference to the Generic UNE docket. Furthermore, in recent decisions, the KCC made it very clear that any approval of SWBT’s application for 271 authority is premised on SWBT making the Generic UNE Docket rates available to all

CLECs. (See Order Regarding Non-Recurring Rates Charges for Unbundled Network Elements, at Para. 4. Docket 97-SCCC-149-GIT)

5. On October 23, 2000, Ionex filed a Complaint with the KCC to enforce the KCC's February and September Orders in the Generic UNE docket. (A copy of the Complaint is attached hereto as Exhibit A). In the Complaint, Ionex alleges that SWBT has illegally failed and refused to apply the Commission's UNE rates to Ionex's interconnection agreement with SWBT. On October 24, 2000, Ionex filed a Motion to Stay SWBT's 271 proceeding in Kansas until the KCC could determine if SWBT was complying with checklist item (i). (Attached hereto at Exhibit B). After SWBT received the motion to stay, SWBT made its request to this Commission.

6. In its reply to Ionex's Motion to Stay the 271 proceeding in Kansas (attached hereto at Exhibit C), SWBT now admits that it is not offering the rates determined in the Generic UNE Docket across the board to all CLECs in Kansas. By SWBT's own admission, it has refused to apply those rates to existing interconnection agreements, even those agreements, such as Ionex's, which explicitly reference the Generic UNE docket and incorporates the rates determined therein. Further, based on SWBT's admission, the Generic UNE rates are not to be voluntarily made available to CLECs negotiating amendments or new agreements. It is SWBT's position that despite the Commission's repeated orders to make the Generic UNE rates available, SWBT was free to offer any rates (even those three times higher) since it is not "SWBT's responsibility to do the legal, regulatory and negotiating work" for another entity. (See SWBT's Reply at pp.3-4). What SWBT fails to appreciate is that it was and remains legally obligated by the KCC to make the Generic UNE ordered rates available to all CLECs. It is this legal obligation that the KCC assumed was being met when it stated that it would support SWBT's

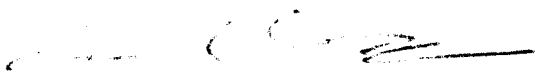
application. Clearly, such a blatant violation of the words and intent of the Generic UNE Orders merits action by this Commission to deny SWBT's request for 271 authority.

7. Such a blatant violation of the Generic UNE Orders which form the basis of SWBT's compliance with the 271 checklist is fatal to its ability to secure authority under Section 271 of the Federal Communications Act for in-region service. One of the essential aspects of a 271 application is this Commission's, as well as the KCC's, determination that SWBT's UNE rates are cost-based and non-discriminatory, as required by 47 U.S.C. §§ 252(c)(2) and 252(d)(1). Indeed, in making its recommendation on the 271 application, the KCC staff repeatedly relied on its belief that SWBT was in fact making the Commission-determined UNE rates available to all CLECs. As reflected in the attached Complaint and replies by SWBT, **this is not true.** SWBT's refusal and conduct completely undermines any KCC staff recommendation, any KCC recommendation and should prevent this Commission from granting 271 authority to SWBT.

WHEREFORE, for the above and foregoing reasons, Ionex Communications, Inc. respectfully requests that Southwestern Bell Telephone Company's request for authorization under Section 271 of the Communications Act to provide in-region, intraLATA service in the State of Kansas be denied.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL



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Lisa C. Creighton  
4520 Main Street, Suite 1100  
Kansas City, Missouri 64111  
Telephone: (816) 460-2400  
Facsimile: (816) 531-7545

ATTORNEYS FOR IONEX COMMUNICATIONS, INC.

### **CERTIFICATE OF SERVICE**

I hereby certify that the original and one copy of the above and foregoing was forwarded via Federal Express on the 14<sup>th</sup> day of November, 2000, to:

Commission Secretary  
Magalie Roman Salas  
445 12<sup>th</sup> Street, S.W., CY-B402  
Washington, D.C. 20554

With 12 copies being forwarded on the same date to:

Janice Myles  
Common Carrier Bureau  
445 12<sup>th</sup> Street S.W., Room 5-B145  
Washington, D.C. 20554

And one copy being forwarded via Federal Express on the same date to:

International Transcription Service (ITS)  
445 12<sup>th</sup> Street S.W., Room CY-314  
Washington, D.C. 20554

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Attorney for Ionex Communications, Inc.

**VERIFICATION**


STATE OF MISSOURI                    )  
  ) ss:  
COUNTY OF JACKSON                )

I, Lisa C. Creighton, of lawful age, being first duly sworn upon my oath, state:

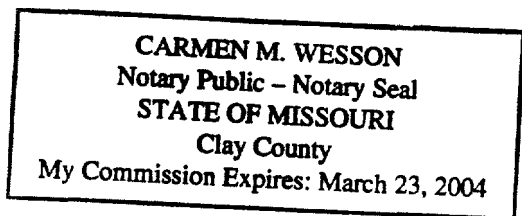
I am the attorney for the above-named petitioner; I have read the above and foregoing Comments Provided by Ionex Communications, Inc. in Opposition to Southwestern Bell Telephone Company's Request for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Kansas, and, upon information and belief, state that the matters therein appearing are true and correct.

  
\_\_\_\_\_  
Lisa C. Creighton

Subscribed and sworn to before me this 14<sup>th</sup> day of November, 2000.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:







THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

OCT 23 2000

Before Commissioners:

John Wine, Chair  
Cynthia L. Claus, Commissioner  
Brian J. Moline, Commission

*John A. Wilson* Docket  
Room

In the Matter of Complaint By Ionex )  
Communications, Inc., Against )  
Southwestern Bell Telephone Company )  
For Charging Improper Rates for Unbundled )  
Network Elements )

Docket No. 97-SWBT-2114-GIT

**COMPLAINT**

COMES NOW Ionex Communications, Inc. ("Ionex"), by and through its attorneys pursuant to K.A.R. 82-1-220 and hereby makes the following Complaint against Southwestern Bell Telephone Company ("SWBT").

**INTRODUCTION**

Ionex files this complaint to enforce the Commission's orders issued *In the Matter of Joint Application of Sprint United Telephone Company, United Telephone Company of Kansas, Untied Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas and United Telephone Company of Southeastern Kansas for the Commission to Open A generic Proceeding on Southwestern Bell Telephone Company's Rates for Interconnection, Unbundled Elements, Transport and Termination and Resale*, Docket No. 97-SCCC-149-GIT (hereinafter the "Generic UNE Docket"). SWBT has illegally failed and refused to apply the Commission's permanent UNE rates to Ionex' interconnection agreement with SWBT.

**BACKGROUND**

1. Ionex is a Kansas corporation with its principal place of business at 5710 LBJ Freeway, Suite 215, Dallas Texas, 75240. The Commission has certified Ionex to provide local

and interexchange services in Kansas. In November, 1999, Ionex Telecommunications, Inc. (Ionex Communications Inc.'s parent company) purchased Feist Long Distance Service, Inc. ("Feist"), a certificated provider of local exchange and interexchange services in Kansas, from Advanced Communications Group, Inc. ("Advanced"). Feist subsequently changed its name to Ionex Communications, Inc.

2. When Ionex Telecommunications, Inc. purchased Advanced, Advanced was operating under an interconnection agreement approved by the Commission by order dated March 23, 1999 in Docket No. 99-SWBT-431-IAT (the "Advanced Agreement"). The Advanced Agreement contained an Attachment UNE with interim pricing that was to be replaced by the Commission's cost-based price determinations in the Generic UNE docket. (*See* Section 13.2 of the Attachment UNE at page 50 (attached hereto as Exhibit A)).

3. The interim UNE rates in the UNE Pricing Appendix to the Advanced Agreement are up to three hundred percent higher than the rates announced in the Commission's order of February 19, 1999 in the Generic UNE Docket (hereinafter the "February Order"). In the February Order, the Commission set permanent interconnection and UNE prices for CLECs interconnecting with SWBT in Kansas. Consistent with the Commission's goals in opening the Generic UNE Docket and pursuant to the Advanced Agreement, the rates in the February Order should have immediately become a part of the Advanced Agreement. However, SWBT did not make Ionex (Advanced's successor in interest) aware of the Commission-ordered rates, and SWBT did not offer the Commission-ordered rates for the UNE pricing pursuant to the Advanced Agreement. Furthermore, now that Ionex is aware of the February Order, SWBT refuses to acknowledge that the Commission-ordered permanent rates are applicable to the Advanced Agreement. SWBT's refusal is illegal, anti-competitive and must be stopped by this Commission.

4. Ionex is a small CLEC which has only recently begun providing service in Kansas. As a new company, Ionex is particularly vulnerable to the anti-competitive conduct in which SWBT is engaging. Ionex is dependent on purchasing UNEs from SWBT at fair, cost-based rates, and SWBT's conduct is depriving Ionex of its ability to compete. As but one example (and a particularly egregious example) of SWBT's pricing practices, for 2-wire unbundled loops Ionex is paying SWBT the following amounts on a recurring basis: \$70.30 for Zone 1, \$26.55 for Zone 2, and \$19.65 for Zone 3. Ionex understands that the Commission-determined recurring rates, announced in the February and September Orders, are \$23.34 in Zone 1, \$13.64 in Zone 2, and \$11.86 in Zone 3. Absent swift action by the Commission to bring an end to SWBT anti-competitive conduct, Ionex will be out of business in Kansas.

5. Ionex management has made it abundantly clear to SWBT that its pricing practices must change immediately. Ionex' general counsel, Sue Weiske, has contacted SWBT personally on many occasions in recent weeks, as recently as Friday, October 20, 2000, and SWBT has failed to commit to charge the proper rates.

6. The Generic UNE Docket was opened in November, 1996, when the Commission granted Sprint's request for a generic investigation to determine SWBT's rates. In opening the Generic UNE Docket, the Commission noted that the arbitration period provided in the federal Telecommunications Act was too short to allow an in-depth examination of cost issues involved in setting rates. The Generic UNE Docket was opened to provide the opportunity to set rates consistent with the federal Telecommunications Act for all CLECs in Kansas. Advanced participated in the Generic UNE Docket. In examining UNE rates, the Commission issued orders adopting TELRIC as the cost methodology required under §252(d) of the federal Telecommunications Act, selecting SWBT's cost studies and setting inputs for the cost studies. These decisions led to the permanent rates set in the February Order. In setting those permanent

prices, the Commission held that “the prices.... are based on the TELRIC cost of UNEs and interconnection and are just and reasonable.” Further, the Commission ruled that “[a]ll CLECs can avail themselves of the prices established herein.” (Id. at ¶74).

7. In April, 1999, the Commission granted reconsideration of the February Order, but it pointedly refused to stay the effect of the permanent UNE rates<sup>1</sup>. Further, when the Commission issued its Order on Reconsideration on September 19, 1999, it reaffirmed its prior findings that the UNE rates set in February were TELRIC based and held “in general, SWBT’s cost to provide UNEs and interconnection will not vary from CLEC to CLEC; thus, the price established under TELRIC for those elements should not vary.” (September Order at ¶ 78). Finally, the Commission held that the cost based pricing determined in the generic proceeding should be generally available to all CLECs. (Id.)

8. In November, 1999, SWBT filed a complaint in the United States District Court for the District of Kansas and an appeal in the Kansas Court of Appeals, challenging the Commission’s authority to use TELRIC as a costing methodology in setting the UNE rates.<sup>2</sup> Advanced was named in the District Court complaint as a CLEC that would receive UNE pricing in its existing interconnection agreement pursuant to the rates set by the Commission in the February and September Orders. Shortly after filing, SWBT sought, and was granted, a stay of both proceedings, leaving the Commission’s February and September orders in place and in effect during the stays.

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<sup>1</sup> See Order of April 6, 1999 and KAR 82-1-235(e), stating that the granting of a reconsideration shall not excuse any person or corporation from complying with a Commission order.

<sup>2</sup> See *Southwestern Bell Telephone Company v. the State Corporation Commission et al.*, Kansas Court of Appeals Case No. 1999-84295-A; *Southwestern Bell Telephone Company v. AT&T Communications of the Southwest, Inc. et al.*, United States District Court for the District of Kansas, Case No. 99-4180-SAC.

9. In May, 2000, Ionex began to submit UNE orders under the Advanced Agreement. After receiving SWBT's invoices for the services, Ionex became concerned about the pricing which appeared to be substantially higher than Ionex' bills for services in other states. In comparing the pricing in the Advanced Agreement to rates that SWBT submitted when negotiating a new Kansas interconnection agreement in August, 2000,<sup>3</sup> Ionex again noticed the substantial difference. Shortly thereafter, Ionex learned that the rates offered by SWBT in the new interconnection agreement were the rates that were set by this Commission in the February Order. Upon discovering this and reviewing the orders issued by the Commission in the Generic UNE Docket, Ionex demanded that its bills under the Advanced Agreement be revised to reflect the Commission rates set in the February and September, 1999 Orders. SWBT responded that since SWBT appealed the February and September orders setting permanent rates for UNEs, the UNE rates were not incorporated into the Advanced Agreement and thus were not available to Ionex. Further, SWBT stated that it was concerned that other CLECs would seek to avail themselves of the Commission-ordered rates if SWBT provided them to Ionex in the Advanced Agreement.

10. SWBT's position directly contradicts SWBT's representations to the U.S. District Court, the Kansas Court of Appeals, and to this Commission. As reflected in the attached pleading (Exhibit B), SWBT has strongly argued that the permanent rates set by the Commission in the Generic UNE Docket are the only rates available to CLECs absent unique and special circumstances. As stated by SWBT, "the Commission's Orders make it abundantly clear that only **if a proposed interconnection agreement requires a 'special or unique arrangement,' is a deviation from the Commission ordered rates warranted.**" (Emphasis in original.) "...SWBT believes it was the Commission's intent to limit application of the 'special or unique'

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<sup>3</sup> The new agreement has been filed, but is not yet approved by this Commission.

circumstances exception to those rare instances when a CLEC requests to interconnect involves special or unique work requirements and/or costs other than those contemplated in the establishment of the rates, not the basic nature of or the language used in the interconnection document itself.”<sup>4</sup> Therefore, as there is nothing unique about the service SWBT delivered and continues to deliver to Ionex under the Advanced Agreement, by SWBT’s own admission, the Advanced Agreement may not include any rates different from those ordered by this Commission.

11. Another fatal problem with SWBT’s response denying Ionex the Commission-ordered rates is that SWBT relies on its judicial challenges to the February and September Orders. However, SWBT itself requested a stay of both the federal and state actions, agreeing that the Commission Orders would remain in effect during the stays. Finally (as if there needs to be more), SWBT has recently agreed to withdraw these actions pursuant to a Stipulation and Agreement entered into with the Commission Staff that was recently approved by this Commission. In the Stipulation, SWBT again acknowledges that the February and September Orders remain in effect.

12. Clearly, SWBT is knowingly and intentionally violating the Commission’s Orders in the Generic UNE Docket, operating in bad faith and engaging in anti-competitive behavior with the intent of harming a competitor. This Commission should not allow such insults to its authority and such blatantly illegal activity to continue. Ionex requests expeditious consideration of this complaint in order to mitigate the harm resulting from SWBT’s anti-competitive and illegal behavior.


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<sup>4</sup> See Motion of SWBT to Determine and Limit Arbitrable Issues, in the Matter of Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with SWBT, Docket No. 00-DCIT-389-ARB, at page 7.

## CONCLUSION

WHEREFORE, Ionex Communications, Inc., prays for an order (1) finding SWBT in violation of the Commission's February 19, 1999 and September 17, 1999 Orders in Docket No. 97-SCC-149-GIT, (2) directing SWBT to come into immediate compliance and apply the applicable rates from those Orders to all UNEs orders submitted by Ionex under the Advanced Agreement since February 19, 1999, and (3) directing SWBT to reimburse Ionex for all expenses and attorneys fees incurred in bringing this complaint.

Respectfully submitted,

By:   
Mark P. Johnson  
Lisa C. Creighton KS Bar No. 14847  
**Sonnenschein Nath & Rosenthal**  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
(816) 460-2400  
(816) 531-7545 FAX

ATTORNEYS FOR IONEX  
COMMUNICATIONS, INC.

**VERIFICATION**

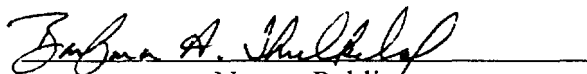
STATE OF MISSOURI                    )  
  ) ss:  
COUNTY OF JACKSON                )

I, Lisa C. Creighton, of lawful age, being first duly sworn upon my oath, state:

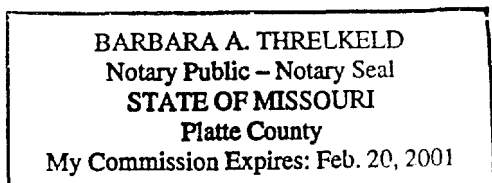
I am the attorney for the above-named petitioner; I have read the above and foregoing Complaint, and, upon information and belief, state that the matters therein appearing are true and correct.

  
\_\_\_\_\_  
Lisa C. Creighton

Subscribed and sworn to before me this 24<sup>th</sup> day of October, 2000.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:





CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 23<sup>rd</sup> day of October, 2000, to:

April J. Rodewald, Esq.  
Bruce A. Ney, Esq.  
Michelle Boehm O'Neal, Esq.  
Southwestern Bell Telephone Company  
220 East Sixth Street, Room 515  
Topeka, Kansas 66603-3596

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Attorney for Ionex Telecommunications, Inc.



## ATTACHMENT 6: UNBUNDLED NETWORK ELEMENTS

### 1.0 Introduction

This Attachment Unbundled Network Elements to the Agreement sets forth the unbundled Network Elements that SWBT agrees to offer to Advanced Communications Group, Inc. The specific terms and conditions that apply to the unbundled Network Elements are described below. The price for each Network Element is set forth in Appendix Pricing - Unbundled Network Elements, attached hereto.

### 2.0 General Terms and Conditions

- 2.1 SWBT will permit Advanced Communications Group, Inc. to designate any point at which it wishes to connect Advanced Communications Group, Inc.'s facilities or facilities provided by a third party on behalf of Advanced Communications Group, Inc. with SWBT's network for access to unbundled Network Elements for the provision by Advanced Communications Group, Inc. of any Telecommunications Service. If the point designated by Advanced Communications Group, Inc. is technically feasible, SWBT will make the requested connection.

### **DISPUTED ISSUE**

Unbundled Network Elements may not be connected to or combined with SWBT access services or other SWBT tariffed service offerings provided to Advanced Communications Group, Inc. or third Parties with the exception of tariffed collocation services. (SWBT position)

Unbundled Network Elements may be connected to or combined with SWBT access services or other SWBT tariffed offerings provided to Advanced Communications Group, Inc. or third Parties to the extent that such services are not available as Unbundled Network Elements. (Advanced Communications Group, Inc. position)

*[Note: With regard to the above disputed issue, the Parties agree to continue to negotiate to resolve their disagreement. Should the Parties be unable to resolve their differences, the Parties agree that they will submit the dispute to the Commission for resolution. Additionally, the Parties agree to reform this Agreement in accordance with the resolution thereof.]*

- 2.2 Subject to the terms and conditions of this Attachment 6, Advanced Communications Group, Inc. may designate any technically feasible network interface to a Network Element.
- 2.3 Advanced Communications Group, Inc. may use one or more Network Elements to provide any technically feasible feature, function, or capability that such Network Element(s) may provide.
- 2.4 SWBT will provide Advanced Communications Group, Inc. access to the unbundled Network Elements provided for in this Attachment, without restriction. Advanced Communications Group, Inc. is not required to own or control any of its own local exchange facilities before it can purchase or use Unbundled Network Elements to provide a Telecommunications Service under this Agreement. SWBT will allow Advanced Communications Group, Inc. to order each Network Element, pursuant to Attachment 7, in order to permit Advanced Communications Group, Inc. to combine such Network Elements with other Network Elements obtained from SWBT or with network components provided by itself or by third parties to provide Telecommunications Services to its customers, provided that such combination is technically feasible and would not impair the ability of other carriers to obtain access to other unbundled network elements or to interconnect with SWBT's network.

**DISPUTED ISSUE**

*When Advanced Communications Group, Inc. recombines Unbundled Network Elements to create services identical to SWBT's retail offerings, the prices charged to Advanced Communications Group, Inc. for the rebundled services will be computed as SWBT's retail prices less the wholesale discount and offered under the same terms and conditions, including the application of access charges. (SWBT position)*

*When Advanced Communications Group, Inc. recombines Unbundled Network Elements in any combination the prices for such elements will be the unbundled network element prices as shown in Appendix Pricing - UNE to this Attachment. (Advanced Communications Group, Inc. position)*

*[Note: With regard to the above disputed issue, the Parties agree to continue to negotiate to resolve their disagreement. Should the Parties be unable to resolve their differences, the Parties agree that they will submit the dispute to the Commission for resolution. Additionally, the*

*Parties agree to reform this Agreement in accordance with the resolution thereof.]*

Any request by Advanced Communications Group, Inc. for SWBT to provide a type of connection between Network Elements that are not currently being utilized in the SWBT network and is not otherwise provided for under this Agreement will be made available in accordance with the Special Request process.

- 2.5 For customer migration from SWBT to Advanced Communications Group, Inc. which involves a disconnect of the existing service and coordinated (as mutually defined by the Parties) installation, orders on an element by element basis or elements in combination must be placed by Advanced Communications Group, Inc. SWBT will not physically disconnect intentionally the elements that are currently connected at the time the orders are placed.
- 2.6 Various subsections below list the Network Elements that Advanced Communications Group, Inc. and SWBT have identified as of the Effective Date of this Agreement. SWBT will upon request of Advanced Communications Group, Inc. and to the extent technically feasible provide Advanced Communications Group, Inc. additional Network Elements or modifications to previously identified Network Elements for the provision by Advanced Communications Group, Inc. of a Telecommunications Service. Such requests will be processed in accordance with the Special Request process.
- 2.7 Subject to the terms herein, SWBT is responsible only for the installation, operation and maintenance of the Network Elements it provides. SWBT is not otherwise responsible for the Telecommunications Services provided by Advanced Communications Group, Inc. through the use of those elements.
- 2.8 Where unbundled elements provided to Advanced Communications Group, Inc. are dedicated to a single end user, if such elements are for any reason disconnected they will be made available to SWBT for future provisioning needs, unless such element is disconnected in error. The Parties agree to release facilities associated with their respective customer's end user services upon request of the end user or the end user's agent.
- 2.9 The Parties acknowledge that the Commission may decline to require unbundling of Network Elements beyond those identified in 47 CFR

Section 51.319 only if the Commission concludes that: (1) such Network Element is proprietary or contains proprietary information that will be revealed if such Network Element is provided to Advanced Communications Group, Inc. on an unbundled basis, and Advanced Communications Group, Inc. could offer the same proposed Telecommunications Service through the use of other, nonproprietary Network Elements within SWBT's network; or (2) the Commission concludes that the failure of SWBT to provide access to such Network Element would not decrease the quality of, and would not increase the financial or administrative cost of, the Telecommunications Service Advanced Communications Group, Inc. seeks to offer, compared with providing that service over other unbundled Network Elements in SWBT's network.

- 2.10 Each Party is solely responsible for the services it provides to its end users and to other Telecommunications Carriers.
- 2.11 SWBT will provide Advanced Communications Group, Inc. reasonable notification of service-affecting activities that may occur in normal operation of SWBT's business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements, routine preventative maintenance and major switching machine change-out. Generally, such activities are not individual service specific, but affect many services. No specific advance notification period is applicable to all such service activities. Reasonable notification procedures will be negotiated by SWBT and Advanced Communications Group, Inc.
- 2.12 Network elements provided to Advanced Communications Group, Inc. under the provisions of this Attachment will remain the property of SWBT.
- 2.13 SWBT will provide network elements where technically feasible. Where facilities and equipment are not available, Advanced Communications Group, Inc. may request and, to the extent required by law and as SWBT may otherwise agree, SWBT will provide Network Elements through the Special Request process.
- 2.14 The elements provided pursuant to this Agreement will be available to SWBT at times mutually agreed upon in order to permit SWBT to make tests and adjustments appropriate for maintaining the services in satisfactory operating condition. No credit will be allowed for any interruptions involved during such tests and adjustments.

2.15 Advanced Communications Group, Inc.'s use of any SWBT network element, or of its own equipment or facilities in conjunction with any SWBT network element, will not materially interfere with or impair service over any facilities of SWBT, its affiliated companies or its connecting and concurring carriers involved in its services, cause damage to their plant, impair the privacy of any communications carried over their facilities or create hazards to the employees of any of them or the public. Upon reasonable written notice and opportunity to cure, SWBT may discontinue or refuse service if Advanced Communications Group, Inc. violates this provision, provided that such termination of service will be limited to Advanced Communications Group, Inc.'s use of the element(s) causing the violation.

2.16 When converting a SWBT account to a Advanced Communications Group, Inc. account, the conversion will be handled as a disconnect of the current account and a coordinated new connect of the unbundled network elements account.

#### 2.17 **Performance of Network Elements**

2.17.1 Each Network Element provided by SWBT to Advanced Communications Group, Inc. will meet applicable regulatory performance standards and be at least equal in quality and performance as that which SWBT provides to itself. Each Network Element will be provided in accordance with SWBT Technical Publications or other written descriptions, as changed from time to time by SWBT at its sole discretion, to the extent consistent with the Act and subject to sections 2.17.3 - 2.17.5. Such publications will be shared with Advanced Communications Group, Inc. Advanced Communications Group, Inc. may request, and SWBT will provide, to the extent technically feasible, Network Elements that are superior or lesser in quality than SWBT provides to itself and such service will be requested pursuant to the Special Request process.

2.17.2 SWBT will provide a SWBT Technical Publication or other written description for each Network Element offered under this Agreement. The Technical Publication or other description for an Element will describe the features, functions, and capabilities provided by the Element as of the time the document is provided to Advanced Communications Group, Inc. No specific form for the Technical Publication or description is required, so long as it contains a reasonably complete and specific description of the Element's capabilities.

- 2.17.3 Nothing in this Agreement will limit either Party's ability to modify its network through the incorporation of new equipment, new software or otherwise. Each Party will provide the other Party written notice of any such upgrades in its network which will materially impact the other Party's service consistent with the timelines established by the FCC in the Second Report and Order, CC Docket 96-98. Advanced Communications Group, Inc. will be solely responsible, at its own expense, for the overall design of its telecommunications services and for any redesigning or rearrangement of its telecommunications services which may be required because of changes in facilities, operations or procedure of SWBT, minimum network protection criteria, or operating or maintenance characteristics of the facilities.
- 2.17.4 Where SWBT is required to provide six or twelve month notice to Advanced Communications Group, Inc. pursuant to Section 2.21.3, Advanced Communications Group, Inc. may submit a request within thirty (30) days of Advanced Communications Group, Inc.'s receipt of a notice of planned network modification, to maintain characteristics of affected elements. Where SWBT is permitted to provide less than six months notice, Advanced Communications Group, Inc. may submit such request within ten days of Advanced Communications Group, Inc.'s receipt of SWBT's notice. To the extent the requested characteristics are specifically provided for in this Attachment, Technical Publication or other written description, SWBT, at its own expense, will be responsible for maintaining the functionality and required characteristics of the elements purchased by Advanced Communications Group, Inc., including any expenses associated with changes in facilities, operations or procedure of SWBT, network protection criteria, or operating or maintenance characteristics of the facilities. To the extent requested characteristics are not specifically provided for therein, Advanced Communications Group, Inc.'s request will be considered under the Special Request Process and the process will be completed prior to modifying Advanced Communications Group, Inc.'s affected element.
- 2.17.5 For elements purchased through the Special Request Process, SWBT, in its discretion, will determine whether it can offer the applicability of the preceding paragraph on a case by case basis.
- 2.17.6 For each Network Element provided for in this Attachment, SWBT Technical Publications or other written descriptions meeting the requirements of this section will be made available to Advanced Communications Group, Inc. not later than March 1, 1997.



2.17.7 SWBT and Advanced Communications Group, Inc. will jointly define performance data consistent with that provided by SWBT to other LSPs, that is to be provided monthly to Advanced Communications Group, Inc. to measure whether unbundled Network Elements are provided at least equal in quality and performance to that which SWBT provides to itself and other LSPs. Such performance data will be defined by the Parties no later than ninety (90) days from the effective date of this Agreement or a date mutually agreeable by the Parties. The Parties will review the measures three months after Advanced Communications Group, Inc.'s first purchase of a SWBT network element to determine if (1) the information meets the needs of the Parties and (2) the information can be gathered in an accurate and timely manner. SWBT will not be held accountable for performance comparisons based on the data until after the three month review or longer as the Parties may agree.

2.18 Advanced Communications Group, Inc. will connect equipment and facilities that are compatible with the SWBT Network Elements and will use Network Elements in accordance with the applicable regulatory standards and requirements referenced in section

2.19 **Special Request**

Sections 3 - 11 below identify specific unbundled Network Elements and provide the terms and conditions on which SWBT will offer them to Advanced Communications Group, Inc. Any request by Advanced Communications Group, Inc. for an additional unbundled Network Element, or modifications to previously identified Network Elements, both to the extent technically feasible, will be considered under this Special Request process. Where facilities and equipment are not available, Advanced Communications Group, Inc. may request and SWBT may agree to provide, Network Elements through the special request process.

2.19.1 Each Party will promptly consider and analyze access to new unbundled Network Element with the submission of a Network Element Special Request hereunder. The Network Element Special Request process set forth herein does not apply to those services requested pursuant to Report & Order and Notice of Proposed Rulemaking 91-141 (rel. Oct. 19, 1992) paragraph 259 and n. 603 and subsequent rulings.

2.19.2 A Network Element Special Request will be submitted in writing and will include a technical description of each requested Network Element, the date when interconnection is requested and the projected quantity of interconnection points ordered with a demand forecast.